

STATE CONSUMER DISPUTES REDRESSAL COMMISSION HARYANA, PANCHKULA

First Appeal No : 435 of 2017

Date of Institution: 11.04.2017

Date of Decision : 13.07.2017

OIC ECHS Polyclinic, House No.887/29, Kamala Colony, Rohtak.

Appellant-Opposite Party

Versus

Smt. Ishra Devi wife of Sh. Dilbag Singh, Ex. Hav./CLK, resident of Village and Post Office Gaddi Kheri, Tehsil and District Rohtak.

Respondent-Complainant

CORAM: Hon'ble Mr. Justice Nawab Singh, President.

Shri Balbir Singh, Judicial Member.

Argued by: Mrs. V.B. Sethi, Advocate for appellant.

Shri S.S. Duhan, Advocate for respondent-complainant

ORDER

NAWAB SINGH J.(ORAL)

By filing the present appeal, OIC ECHS Polyclinic, Rohtak-opposite party (for short, 'ECHS') has challenged the order dated October 04th, 2016 passed by District Consumer Disputes Redressal Forum, Rohtak (for short 'District Forum') whereby it directed to pay Rs.19,202/- alongwith interest at the rate of 9% per annum from the date of filing the complaint, that is, April 11th, 2014 till its realization and Rs.3500/- litigation expenses to complainant Ishra Devi wife of Dilbag Singh, Ex-Havaladar on account of expenses incurred by her husband on her treatment in Siwatch Hospital Rohtak.

2. ECHS was launched to provide comprehensive healthcare to all Ex-Servicemen pensioners. Dilbag Singh was Member of ECHS by contributing a share. The complainant was brought to ECHS Polyclinic Rohtak. After medical examination, she was referred to Base Hospital New Delhi. The Base Hospital gave the date of appointment, that is, March 21st, 2013. Since, there was emergency as stated by the complainant in her complaint and could not wait upto March 21st, 2013, she got herself treated in Siwatch Hospital Rohtak on March 10th, 2013. She spent Rs.19,202/- on her treatment. ECHS did not pay the aforesaid amount to the complainant. Hence, the complainant filed complaint under Section 12 of the Consumer Protection Act, 1986 before the District Forum.

3. The ECHS, in its, written version pleaded that since the complainant got herself treated in private hospital at Rohtak and did not inform ECHS about the treatment, she was not entitled for the expenses incurred on her treatment.

4. The ECHS has filed an application under Section 5 of the Limitation Act seeking condonation of 144 days delay in filing the appeal. The grounds taken in the application are as under:-

"2. That when the order was pronounced on October 04th, 2016 in the case neither the District forum, Rohtak nor the counsel of appellant intimated Polyclinic Rohtak about pronouncement of order and out come of the case. It was only on January 17th, 2017, when the show cause notice was delivered at Polyclinic, the officials contacted their counsel and came to know about the decision of the case. The appellant collected the copy of the order dated October 04th, 2016 from counsel and case was taken up with higher authorities on January 19th, 2017 seeking further advice in the matter. The decision to file appeal was received on March 17th, 2017 and immediately Station Headquarter Chandimandir was approached for further action and case was entrusted to

Panchkula counsel on March 25th, 2017. The appellant also took the sanction for release of amount for preparing the pay order i.e. 50% of awarded amount which took out of time as in this process, the appellant had to go through various channels.

3. That due to the above administrative reason and due to not knowing the decision of case till January 17th, 2017 the appellant could not file the appeal within limitation and there is delay of 143 days for filing the appeal, which may kindly be condoned in the interest of law and justice.”

5. Learned counsel for the ECHS has contended that the delay caused in filing of the appeal is unintentional and it has occurred due to circumstances beyond the control of the ECHS.

6. A 30 days period has been prescribed in Section 15 of the Consumer Protection Act, 1986 (for short 'Act'), for filing appeal against the order of the District Forum. However, the proviso contained therein permits the State Commission to entertain an appeal after the expiry of the period of 30 days if it is satisfied that there is 'sufficient cause' for not filing the appeal within the period prescribed. The expression 'sufficient cause' has not been defined in the Act, rightly so, because it would vary per facts and circumstances of each particular case.

7. It is well settled that the delay cannot be condoned on the ground of equity and generosity. While proceeding with the prayer made it has to be kept in mind that expiration of the period of limitation prescribed gives a right to the adversary to treat the order as binding between the parties and this legal right provided by lapse of time should not be disturbed light heartedly. Similar view dovetails from the following authoritative pronouncements:-

8. Hon'ble Supreme Court in Bikram Dass Versus Financial Commissioner and others, AIR 1977 Supreme Court 1221 has held as under:-

“Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case law has grown around S.5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his right must explain every day's delay.”

9. In State of Nagaland versus Lipokao and others 2005(2) RCR (Criminal) 414 Hon'ble Supreme Court has observed that to get any appeal admitted or to get the delay condoned, it is condition precedent to first prove the “sufficient cause” for exercise of discretion by the Court in condoning the delay. Unless and until the sufficient cause is not proved, the delay cannot be condoned.

10. In Pundlik Jalam Patil (dead) by LRS vs. Executive Engineer, Jalgaon Medium Project and Another, (2008) 17 SC 448, Hon'ble Supreme Court held as under:-

“...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and “do not slumber over their rights”.

11. Hon’ble Apex Court in 2012(2) CPC 3 (SC)–Anshul Aggarwal Vs. New Okhla Industrial Development Authority observed as under:-

“It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986, for filing appeals and revisions in Consumer matters and the object of expeditious adjudication of the Consumer disputes will get defeated, if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras”.

12. In view of the above, this Commission has to bear in mind that the object of expeditious disposal of consumer dispute would get defeated if such like applications filed on frivolous grounds are allowed. The law comes to the assistance of the vigilant and not of the sleepy.

13. In the case in hand, the ground taken in the application is manifestation of the laxity, negligence and inefficiency. To accept such ground as sufficient cause for condonation of delay would tantamount to putting premium on the parties own acts of negligence and non challance. So, this Commission does not find it a fit case to condone the delay of 144 days. Hence, the application for condonation of delay is dismissed.

14. Even on merits, there is no force in this appeal. The complainant was having stones in her gall bladder and was taking treatment from ECHS Polyclinic Rohtak, from where she was referred to Base Hospital New Delhi. The Base Hospital gave the date of appointment, that is, March 21st, 2013. On March 10th, 2013 the complainant suddenly fell ill. Since, there was emergency, the complainant could not wait upto March 21st, 2013, she got herself treated in Siwatch Hospital Rohtak. In the written version filed by the ECHS, it has been specifically stated that a member/beneficiary could take treatment in a private hospital in case of emergency only. Thus, the impugned order passed by the District Forum is perfectly right and requires no interference. Accordingly, the appeal is dismissed on both the grounds, that is, being barred by limitation as well as on merits.

15. The deposited amount of Rs.13,101/- be refunded to the respondent-complainant against proper receipt and identification in accordance with rules.

Announced (Balbir Singh) (Nawab Singh)

13.07.2017 Judicial Member President

UK